

UNITED STATES COURT OF APPEALS  
FOR THE THIRD CIRCUIT

NO. 04-1147

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IN RE: RAPHAEL MENDEZ,  
Petitioner

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On a Petition for Writ of Mandamus from the  
District Court of the Virgin Islands  
(Related to D.C. Civ. No. 02-cv-0195-M)

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Submitted Under Fed. R. App. Pro. 21  
APRIL 16, 2004

Before: CHIEF JUDGE SCIRICA, WEIS AND GARTH, CIRCUIT JUDGES  
(Filed May 5, 2004)

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OPINION

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PER CURIAM.

Petitioner Raphael Mendez was originally charged in the District Court of the Virgin Islands, Division of St. Thomas and St. John, with assault in the first degree, possession of an unlicensed firearm during a violent crime, and possession of a sawed-off shotgun. The information later was amended, charging Mendez with assault in the first degree, possession of an unlicensed firearm during a crime of violence, and possession by a felon of a firearm. Mendez moved for a psychological evaluation to determine his

competency, and, after a hearing, the District Court declared Mendez incompetent to stand trial. He was placed in the custody of the United States Attorney General and transported to the Federal Correctional Institution in Butner, North Carolina (“FCI-Butner”). After reviewing the psychiatric and psychological report from FCI-Butner, the District Court committed Mendez to FCI-Butner for four months pursuant to 18 U.S.C. 4241.

In September 1991, the warden of FCI-Butner, J.T. Hadden, notified the District Court that Mendez was still incompetent to stand trial. In addition, Warden Hadden filed commitment papers in United States District Court for the Eastern District of North Carolina. Thereafter, Mendez was committed to FCI-Butner by the Eastern District Court of North Carolina pursuant to 18 U.S.C. 4246. Mendez appealed his commitment to the Court of Appeals for the Fourth Circuit, but the court affirmed the judgment of commitment in United States v. Mendez, 1992 WL 157430 (4th Cir. July 9, 1992).

Since then Mendez has filed numerous civil rights actions and habeas corpus petitions, challenging his commitment and the conditions of his commitment. At issue here are two actions: a petition for writ of habeas corpus filed in January 2003 in the Territorial Court of the Virgin Islands, Mendez v. Gov’t of the Virgin Islands, Civ. Misc. 03-004, which is pending before the Honorable Brenda J. Hollar, and an in forma pauperis civil rights action filed in October 2002 in the District Court of the Virgin

Islands, Mendez v. United States District Attorney, 02-cv-0195, which is pending before the Honorable Barnard Moore. In the habeas petition filed in the Territorial Court Mendez seeks release from his commitment at FCI-Butner. In his in forma pauperis civil rights action filed in the District Court he seeks compensation from the United States Attorney, his federal public defender, and a police officer for malicious prosecution and false imprisonment with respect to his commitment.

Mendez has filed a petition for a writ of mandamus, in which he complains of delay by the Territorial Court and the District Court in adjudicating his cases. We will deny the petition. A writ of mandamus is an extreme remedy that is invoked only in extraordinary situations. See Kerr v. United States Dist. Court, 426 U.S. 394, 402 (1976). To justify the use of this extraordinary remedy, a petitioner must show both a clear and indisputable right to the writ and that he has no other adequate means to obtain the relief desired. See Haines v. Liggett Group Inc., 975 F.2d 81, 89 (3d Cir. 1992).

Even assuming we have jurisdiction to order the Territorial Court to act on Mendez' 2003 habeas petition, and we do not decide that we do (we may only issue a writ in aid of our jurisdiction, and initial appellate jurisdiction over the Territorial Court rests with the Appellate Division of the District Court), Mendez has not shown a clear and indisputable right to the writ or that he has no other adequate means to obtain the relief desired. The District Court for the Eastern District of North Carolina is responsible for Mendez' current commitment, and thus the Eastern District of North Carolina is the

appropriate jurisdiction to consider Mendez' habeas request to be released from confinement. Delay would only be relevant where a court has jurisdiction in the first instance, and the Territorial Court did not authorize the original or continuing commitment. Mendez' argument that the District Court did not originally have jurisdiction to prosecute the criminal charges, and that charges should have been brought in the Territorial Court, is irrelevant. The charges have long since been dismissed; Mendez is not in custody pursuant to any criminal charges. As the Court of Appeals for the Fourth Circuit has previously explained to Mendez, if he wishes to challenge his continued commitment, he should file a new petition for writ of habeas corpus in United States District Court for the Eastern District of North Carolina. See United States v. Mendez, 1996 WL 175058 (4th Cir. April 15, 1996).

The in forma pauperis civil rights action in the District Court presents a somewhat closer question, but, again we conclude that Mendez has not shown a clear and indisputable right to the writ. Delay would only be relevant if Mendez had a valid reason to file the civil rights suit in the District Court, and he does not. The defendants are not personally involved in Mendez' continued commitment in North Carolina, and therefore cannot be liable to him for money damages in that respect. See Rizzo v. Goode, 423 U.S. 362, 375-77 (1976). With respect to the original commitment, Heck v. Humphrey, 512 U.S. 477 (1994), bars the action because the commitment order has never been invalidated. Thus, the action in the District Court is subject to dismissal under 28 U.S.C.

§ 1915(e)(2)(B) for these and probably other reasons as well.

To the extent that this civil rights action raises a claim of involuntary medication, the District Court has already advised Mendez at least once before that:

This Court dismissed all charges against defendant on September 29, 1992 because he was found incompetent to stand trial. Although this Court was the initial court that committed defendant, the District Court of the Eastern District of North Carolina is responsible for defendant's current commitment. Hence, the Eastern District Court of North Carolina is the appropriate jurisdiction to consider Mr. Mendez's substantive request for relief.

Gov't of the Virgin Islands v. Mendez, 1995 WL 458439 (D.V.I. January 26, 1995)

(denying motion for transcripts at government expense grounded on claim of unlawful commitment to FCI-Butner).

We will deny the petition for writ of mandamus.